

## § 2.77

## 37 CFR Ch. I (7–1–14 Edition)

See § 2.56 for the requirements for specimens; and

(3) The fee per class required by § 2.6.

(c) An amendment to allege use may be filed only when the applicant has made use of the mark in commerce on or in connection with all of the goods or services, as specified in the application, for which applicant will seek registration in that application unless the amendment to allege use is accompanied by a request in accordance with § 2.87 to divide out from the application the goods or services to which the amendment pertains. If more than one item of goods or services is specified in the amendment to allege use, the dates of use required in paragraph (b)(1) of this section need be for only one of the items specified in each class, provided the particular item to which the dates apply is designated.

(d) The title “Allegation of Use” should appear at the top of the document.

(e) The Office will review a timely filed amendment to allege use to determine whether it meets the following minimum requirements:

(1) The fee prescribed in § 2.6;

(2) One specimen or facsimile of the mark as used in commerce; and

(3) A statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the applicant that the mark is in use in commerce.

(f) A timely filed amendment to allege use which meets the minimum requirements specified in paragraph (e) of this section will be examined in accordance with §§ 2.61 through 2.69. If, as a result of the examination of the amendment to allege use, applicant is found not entitled to registration for any reason not previously stated, applicant will be so notified and advised of the reasons and of any formal requirements or refusals. The notification shall restate or incorporate by reference all unresolved refusals or requirements previously stated. The amendment to allege use may be amended in accordance with §§ 2.59 and 2.71 through 2.75. If the amendment to allege use is acceptable in all respects, the applicant will be notified of its acceptance. The filing of such an amend-

ment shall not constitute a response to any outstanding action by the Trademark Examining Attorney.

(g) If the amendment to allege use is filed within the permitted time period but does not meet the minimum requirements specified in paragraph (e) of this section, applicant will be notified of the deficiency. The deficiency may be corrected provided the mark has not been approved for publication. If an acceptable amendment to correct the deficiency is not filed prior to approval of the mark for publication, the amendment will not be examined.

(h) An amendment to allege use may be withdrawn for any reason prior to approval of a mark for publication.

(i) If the applicant does not file the amendment to allege use within a reasonable time after it is signed, the Office may require a substitute verification or declaration under § 2.20 stating that the mark is still in use in commerce.

(j) For the requirements for a multiple class application, see § 2.86.

[54 FR 37593, Sept. 11, 1989, as amended at 63 FR 48097, Sept. 9, 1998; 64 FR 48922, Sept. 8, 1999; 64 FR 51245, Sept. 22, 1999; 73 FR 67770, Nov. 17, 2008; 74 FR 54908, Oct. 26, 2009; 77 FR 30207, May 22, 2012]

### § 2.77 Amendments between notice of allowance and statement of use.

(a) The only amendments that can be entered in an application between the issuance of the notice of allowance and the submission of a statement of use are:

(1) The deletion of specified goods or services from the identification of goods/services;

(2) The deletion of a basis in a multiple-basis application; and

(3) A change of attorney or change of address.

(b) Other amendments filed during this period will be placed in the application file and considered when the statement of use is examined.

[73 FR 67770, Nov. 17, 2008]

### PUBLICATION AND POST PUBLICATION

#### § 2.80 Publication for opposition.

If, on examination or reexamination of an application for registration on the Principal Register, it appears that